Supreme Court, U.S.
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92-1587

NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

THE PEOPLE OF THE STATE OF MICHIGAN,
PETITIONER

vs.

HARRIET DAVIS
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

SUPPLEMENTAL BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

DID THE MICHIGAN SUPREME COURT CORRECTLY HOLD THAT AN EMERGENCY CIRCUMSTANCES ENTRY INTO PREMISES, AS DISTINGUISHED FROM AN EXIGENT CIRCUMSTANCES ENTRY, IS MADE BY THE POLICE IN THEIR COMMUNITY CARETAKER ROLE RATHER THAN TO SEARCH FOR EVIDENCE OF A CRIME, AND IS JUSTIFIED IF "REASONABLE," PROBABLE CAUSE NOT BEING REQUIRED, BUT ERR IN FINDING THAT AN ENTRY IS NOT REASONABLE IF THE CIRCUMSTANCES ON WHICH IT IS BASED ARE SUSCEPTIBLE OF INNOCENT EXPLANATIONS?

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53 Cr L 1073 (9th Cir, No. 92-30107,
4-12-93).....1

SUPPLEMENTAL REASON FOR GRANTING THE WRIT

As indicated in the Petition, the Michigan Supreme Court in this case agreed with the prosecution that a part of the "community caretaking" function of the police is to respond to "emergency circumstances," which is a different doctrine than "exigent circumstances." Exigent circumstances is an ordinary search for evidence upon probable cause, the warrant being excused because of the exigency of the circumstances; emergency circumstances is where the purpose of the entry/search is not to find evidence, but, for example, because of a reasonable belief someone inside might be in need of immediate aid. Exigent circumstances requires probable cause; emergency circumstances does not. The quarrel of the state with the Michigan Supreme Court was its application of a reasonableness standard akin to reasonable suspicion,

which required a negating of reasonable inferences susceptible of other than a nefarious construction.

The recent case of United States v Erickson, 53 Cr L 1073 (CA 9, No. 92-30107, 4-12-93) further demonstrates the need for review by this Court of this area of law. In that case the police believed a residence had been burglarized due to neighbor reports of two men dragging a large brown plastic bag, which appeared to be full of heavy items, across the backyard of the individual, Erickson, who came to be a defendant. In order to determine whether the house had been burgled, an officer who came upon an open basement window pulled bag a plastic sheet covering the window and looked in, and saw marijuana plants.

In a surprising holding the Ninth Circuit held that the community caretaking

function of the police does not extend at all to residences or commercial buildings, being limited strictly to automobiles. Only exigent circumstances, requiring probable cause, will allow entry into premises without a warrant, held the court. This holding is mistaken, Petitioner submits, for reasons stated in the petition. See 2 LaFave, Search and Seizure (2d Edition), sec. 6.6. Professor LaFave has stated that the police "may also enter private property for the purpose of protecting the property of the owner or occupant or some other person." As an example of such appropriate police conduct Professor LaFave points to the circumstance "where the police reasonably believe that the premises have recently been or are being burglarized." 2 LaFave, Search and Seizure, 6.6(b), p.707 ff.

Because, as the Ninth Circuit case of United States v Erickson demonstrates,

there is a confusion regarding the doctrine of emergency circumstances as a part of the community caretaking function of the police as distinguished from exigent circumstances, and because, though the Michigan Supreme Court properly understood the distinction it misdefined reasonableness under the emergency circumstances/community caretaking doctrine, certiorari should be granted.

RELIEF

WHEREFORE, petitioner requests that certiorari be granted.

Respectfully submitted,

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